

However, the Action also apparently refers to other rejections different from which the appeal was taken, i.e., new grounds of rejection. Yet there is no indication or statement in the Action that prosecution has been reopened. Nor is the Action in compliance with the procedural rules of the Office (MPEP § 1208.02) for reopening prosecution. Furthermore, because of the Action's requirement for a signed copy of the Appeal Brief filed 12/17/01, one would conclude that prosecution has not been reopened. That is, why would the Office require a signed copy of the Appeal Brief filed 12/17/01 if they were reopening prosecution? If the Office was reopening prosecution then the Appeal Brief filed 12/17/01 would be moot.

Additionally, Appellant has not been presented any evidence that the Examiner obtained supervisory approval to reopen prosecution after the appeal (MPEP § 1208.01, 1208.02). Appellant requests evidence of the approval on his copy of the Office action.

Furthermore, Appellant notes that the Action's rejection involving numbered paragraph 7 (Action page 4) appears to rely on Krivec. Appellant's previously filed Appeal Brief already addressed rejections based on Krivec. Thus, the Action's reliance on Krivec is another example that prosecution has not been reopened and that Appellant's Appeal Brief remains in effect.

Thus, it is unclear whether the Action is (1) a Notification of defective appeal brief; (2) a reopening of prosecution; or (3) an Examiner's Answer. Thus, the Action is defective.

Until the Office removes this ambiguity from the unclear and confusing record, Appellant has to conclude that the Action, as best understood, is not an Examiner's Answer and that prosecution has not been reopened. Thus, the rejections from which their appeal was taken are the only rejections pending. Therefore, Appellant's Appeal Brief remains in effect.

Defective Appeal Brief


Appellant respectfully requests reconsideration and withdrawal of the apparent holding of defective appeal brief. The Action indicated that the Appeal Brief filed 12/17/01 was unsigned. A signed copy was required. Please find enclosed signed copies of the Appeal Brief filed 12/17/01. Thus, Appellant requests that the holding of defective appeal brief be removed.

Appellant's Appeal Brief was asserted by the Office to be defective because it exceeded an appeal brief size limit. That is, the Appeal Brief was held to exceed an alleged 30-page, 14,000 words, or 1,300 lines limitation. Appellant maintains that this is not a legal basis for holding the Appeal Brief defective and in noncompliance with 37 C.F.R. § 1.192(c).

Additionally, unless the Office is holding all appeal briefs to a specific (lower) size limit (which it is not), then the Office's Action against Appellant constitutes action which is arbitrary and capricious, and a violation of Appellant's Due Process and Equal Protection rights. The Office is hereby notified that it may be liable for all costs incurred by Appellant in responding to the arbitrary and capricious and frivolous allegation regarding appeal brief size limitations.

The holding of defective appeal brief should be withdrawn for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,



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March 14, 2002

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Washington, D.C. 20231

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GROUP 3600

Attn: Art Unit 3651
Patent Examiner Jeffrey A. Shapiro

Re: **Application Serial No.:** 09/288,685
Applicants: David T. Frederick
Title: Medical Cabinet With Adjustable Drawers
Docket No.: D-1108

Sir:

Please find enclosed Applicant's Response to the Office Action dated March 5, 2002 for filing in the above identified Application. Also enclosed is the requested signed Appeal Brief of Appellant (previously filed December 17, 2001) in triplicate for filing in the above identified application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with this Response and any other fee due to Deposit Account 10-0637.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231 this 14th day of March 2002.

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